



To enrich lives through effective and caring service



October 2, 2012

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

22 October 2, 2012

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

Gary Jones
Deputy Director

Dear Supervisors:

**APPROVAL OF AMENDMENT NO. 10 TO LEASE NO. 7974
WINDWARD YACHT CENTER (PARCEL 54 at 13645 FIJI WAY)
MARINA DEL REY
(4th DISTRICT- 4 VOTES)**

SUBJECT

This Board letter requests approval of a Marina del Rey lease amendment for Parcel 54 (Windward Yacht Center) that adjusts the square foot rental, increases percentage rents, increases security deposit and updates the insurance provisions.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed lease Amendment No. 10 is categorically exempt under the California Environmental Quality Act pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines and Section 15301 of the State CEQA Guidelines.
2. Approve and authorize the Chairman to sign the attached Amendment No. 10 to Lease No. 7974 pertaining to the readjustment of rents and insurance for a ten-year term ending December 31, 2018, and adding a provision to safeguard minimum rent against future downward adjustments.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Marina del Rey leases generally provide for the periodic review of leasehold rents and liability insurance coverage to ensure that the rental rates payable to the County are maintained at current fair market levels and that the amount of general liability insurance is adequate to protect the County's interests. County rents are typically computed as the greater of either a fixed minimum rent or the total of varying percentages of the lessee's gross receipts from uses of the leasehold.

The Parcel 54 lease requires adjustment of rents and insurance on January 1, 1999 (1999 Rental Adjustment Date) and every tenth anniversary thereafter. Amendment No. 10 memorializes square foot rental (minimum rent) and percentage rate increases that occurred as of the 1999 Rental Adjustment Date but weren't formalized in a lease amendment. Specific to minimum rent, it provides for the minimum rent to be adjusted on the first day of January of every third year from January 1, 2002 to an amount equal to 75% of the average annual rent payable by the lessee to the County over the prior three years. With respect to changes of percentage rentals that occurred as of the 1999 Rental Adjustment Date, Amendment No. 10 reflects rate increases as follows: Dry Boat Storage from 20% to 25%; Land and Water Facilities from 7.5% to 12.5%; Office Rents from 11% to 12.5%; Do it Yourself/Haul Out from 4% to 5%; Do it Yourself/Dock from 3% to 25%. Also, a Liveaboard category was established at 25% and the Boat Brokerage percentage changed from 10% to the greater of 1) 5% of commissions, or 2) \$0.15 per square foot per month of defined outdoor display area, if any, plus 12.5% of rent received for broker's office rental.

With respect to the 2009 Rental Adjustment Date, Amendment No. 10 reflects rates that are within the range of comparable rates at other Marina del Rey leaseholds. Through a negotiated settlement, the lessee has agreed to maintain percentage rent for Boat Slips and Anchorage at 25% and increase the rate for the Commercial Boating category from 5% to 6% and the Office Rents category from 12.5% to 13.5%. As of the 2009 Rental Adjustment Date, the Amendment also provides that the rental security deposit be maintained at an amount equal to one month's minimum rent and, as of the date the Amendment is executed, incorporates changes to the indemnity clause, insurance requirements, and miscellaneous insurance provisions to conform to the Chief Executive Office Risk Management Branch's new and more stringent requirements. Finally, the Amendment provides for a "Retroactive Rent and Interest" provision as allowed under section 15 of the Lease.

Amendment No. 10 also provides that, following Amendment No. 10 Effective Date, all annual minimum rent adjustments shall either increase the annual minimum rent or maintain it at the then-current amount.

Implementation of Strategic Plan Goals

The recommended action will keep County percentage rent categories at this parcel comparable to other Marina del Rey leaseholds and incorporates the new insurance provisions, in fulfillment of Strategic Plan Goal No. 1, "Operational Effectiveness", Strategy 2, "Fiscal Sustainability".

FISCAL IMPACT/FINANCING

There will be no significant current financial impact, as the Lessee has been paying the new rates since 1999. Since the 1999 Rental Adjustment Date through the end of 2011, the total increase in revenue from the new rates has been \$94,411.

Operating Budget Impact

The increased revenue for this 2009 Rental Adjustment Date is included in the Fiscal Year 2012-13 Adopted Budget, as the Lessee has been paying the new rates since 1999.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Commonly known as Windward Yacht Center, Parcel 54 contains 54 boat slips and a 1,500 square foot building for boat repair and retail businesses. The leasehold occupies 3.56 acres of land and 2.98 acres of water in Marina del Rey. The 60-year lease between the County and lessee's predecessor-in-interest was executed in 1964.

This Amendment has been approved as to form by County Counsel. At its meeting of August 8, 2012, the Small Craft Harbor Commission endorsed the Director's recommendation that your Board approve and execute the proposed Amendment.

ENVIRONMENTAL DOCUMENTATION

The proposed Amendment is exempt under the California Environmental Quality Act pursuant to Class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current services from your Board's approval of Amendment No. 10.

CONCLUSION

Please have the Chairman sign all three copies of Amendment No. 10 and have the Executive Officer of the Board return two executed copies, as well as a copy of the adopted Board letter, to the Department of Beaches and Harbors.

Respectfully submitted,



for Santos H. Kreimann
Director

Attachment (1)

c: Chief Executive Officer

The Honorable Board of Supervisors
October 2, 2012
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County Counsel
Executive Officer, Board of Supervisors

AMENDMENT NO. 10 TO LEASE NO. 7974

PARCEL NO. 54 - MARINA DEL REY SMALL CRAFT HARBOR

READJUSTMENT OF RENT

THIS AMENDMENT TO LEASE is made and entered into this 2nd day of October, 2012 (the "Effective Date").

BY AND BETWEEN

**COUNTY OF LOS ANGELES,
hereinafter referred to as "County",**

AND

**WINDWARD YACHT AND REPAIR, INC., a
California corporation, hereinafter referred to
as "Lessee".**

W I T N E S S E T H:

WHEREAS, County and Lessee's predecessors in interest entered into Lease No. 7974 under the terms of which County leased to Lessee's predecessors in interest that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 54, which leasehold premises (the "Premises") are more particularly described as Exhibit "A" attached to and incorporated in said lease, as amended (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 15 of said Lease provides that as of January 1, 1999, and as of January 1st of every tenth year thereafter (the "Rental Adjustment Date"), the square foot rental, all categories of percentage rentals and liability insurance requirements (collectively, the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the standards established in said Section 15; and

WHEREAS, Section 15 further provides that such readjustments shall be accomplished by agreement of the parties and in the event such agreement cannot be reached, the readjustments shall be settled by binding arbitration in the manner set forth at length in said Section 15; and

WHEREAS, the parties hereto have reached agreement with respect to the Adjusted Rentals that are to apply for the ten-year period commencing on January 1, 1999 (the "1999 Rental Adjustment Date") and the ten-year period commencing on January 1, 2009 (the "2009 Rental Adjustment Date");

NOW, THEREFORE, in consideration of the mutual agreements, covenants and restrictions contained herein, the parties, and each of them, agree as follows:

7974 Supplement No. 10

1. SECURITY DEPOSIT. Commencing as of the 2009 Rental Adjustment Date, the first paragraph of Section 7 (SECURITY DEPOSIT) is hereby deleted and the following substituted therefor:

"The security deposit shall be maintained at an amount equal to one month of current monthly minimum rent."

2. SQUARE FOOT RENTAL. Commencing as of the 1999 Rental Adjustment Date, the first paragraph of Section 12 (SQUARE FOOT RENTAL) of said Lease is deemed deleted and the following substituted therefor:

"Commencing as of the 1999 Rental Adjustment Date, the annual square foot rental for the whole of the Premises shall be \$74,290.53. On January 1, 2002 and every third year thereafter, the annual square foot rental shall be readjusted to equal seventy-five percent (75%) of the annual average of all rents payable by the Lessee under the Lease for the immediately preceding three-year period. Provided, however, that for the remaining Term of the Lease in no event shall annual square foot rental ever be reduced to an amount that is less than the annual square foot rental that was in effect for the year immediately preceding such adjustment"

3. PERCENTAGE RENTALS FOR THE 1999 RENTAL ADJUSTMENT DATE. Commencing as of the 1999 Rental Adjustment Date, subsections (a), (b), c(ii), (c)(iii), (e), (u) and (v) of Section 13 (PERCENTAGE RENTALS) are deemed deleted and the following subsections (a), (b), (c)(ii), (c)(iii), (e)(i), (e)(ii), (e)(iii), (u) and (v) are correspondingly substituted therefor:

"(a) TWENTY-FIVE PERCENT (25%) of gross receipts from the rental or other fees charged for the use of boat slips, anchorages, moorings, dockside gear lockers, dockside storage space, liveboards, and such other facilities and services ancillary thereto as are generally provided in common to all tenants.

(b) TWENTY-FIVE PERCENT (25%) of gross receipts from the rental or other fees charged for the use of dry storage facilities, landside gear lockers, landside storage space, boats, motors, tackle, recreational equipment, tools, equipment, launch and retrieving of small boats, and from the sale of live bait.

(c)(ii) TWELVE AND ONE-HALF PERCENT (12.5%) of gross receipts or other fees charged for the occupancy of structures and other facilities other than Apartments or Offices, such as (1) hotel and/or motel accommodations, (2) house trailers, (3) meeting rooms, (4) rental of land and/or water facilities for activities not otherwise provided for in this Section, such as, but not limited to, television and/or motion pictures, (5) parking fees or charges except where such parking fees or charges are collected in conjunction with an activity, the gross receipts from which are required to be reported in a percentage category greater than TWELVE AND ONE-HALF PERCENT (12.5%).

(c)(iii) TWELVE AND ONE-HALF PERCENT (12.5%) of gross receipts or other fees charged for the occupancy of offices utilized for banking, financial or investment activities, internal clerical or administrative activities of business enterprises, real estate and

insurance brokerage, legal, medical, engineering, travel agencies, or similar professional services (collectively, "Offices"), but not to include, however, stores, shops or other commercial establishments, the gross receipts pertaining to which are subject to percentage rentals and specifically required to be reported under other subsections of this Section.

(e)(i) For boat brokerage activities, the greater of (A) FIVE PERCENT (5%) of boat brokerage commission or other fees earned from boat brokerage; or (B) FIFTEEN CENTS (\$0.15) per square foot per month of landside outdoor display area, if any, utilized for the boat brokerage activities plus rent owed, if any, pursuant to subsection (c)(iii) of this Section 13, for office space utilized for the boat brokerage activity.

(e)(ii) FIVE PERCENT (5%) of commissions or other fees earned from car rental agencies, marine insurance commissions where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, telephone service charges, laundry and dry cleaning commissions and other similar activities where earnings are normally on a commission basis when said activity is approved in advance by Director.

(e)(iii) Notwithstanding any other provision of this Lease, the monetary amount specified in subsection (e)(i)(B) of this Section 13 shall be adjusted concurrently with the date that percentage rent is to be readjusted in any manner pursuant to Section 15, hereof, to the amount that is equal to seventy five percent (75%) of the average monthly rent then payable to the County per square foot of land for all parcels leased by the County to third parties within Marina del Rey for which the County receives at least \$25,000 per year in gross rental income.

(u) FIVE PERCENT (5%) of the gross receipts from hauling, launching and lay fees for boat owner do-it-yourself activities.

(v) TWENTY FIVE PERCENT (25%) of gross receipts from work docks for boat owner do-it-yourself facilities."

4. PERCENTAGE RENTALS FOR THE 2009 RENTAL ADJUSTMENT DATE.

Commencing as of the 2009 Rental Adjustment Date, subsections (c)(iii) and (g) of Section 13 (PERCENTAGE RENTALS) are deemed deleted and the following subsections (c)(iii) and (g) are correspondingly substituted therefor:

"(c)(iii) THIRTEEN AND ONE-HALF PERCENT (13.5%) of gross receipts or other fees charged for the occupancy of offices utilized for banking, financial or investment activities, internal clerical or administrative activities of business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies or similar professional services (collectively, "Offices"), but not to include, however, stores, shops or other commercial establishments, the gross receipts pertaining to which are subject to percentage rentals and specifically required to be reported under other subsections of this Section.

(g) SIX PERCENT (6%) of gross receipts received by Lessee or sublessee, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee or sublessee

from commercial boating activities, including, but not limited to, charter boat, bareboat charters and sport fishing boats as further defined in Policy Statement No. 21."

5. COMMERCIAL SUBLEASES. Commencing as of the Effective Date, Section 22 (SUBLEASES, ASSIGNMENTS, TRUST DEED BENEFICIARIES, MORTGAGEES AND SUCCESSORS) of said Lease is hereby amended by adding the following paragraph at the end of subsection (A)(1):

"Without limiting the foregoing, any proposed commercial sublease, or any amendment or assignment of an existing commercial sublease covering new or used boat and boat trailer sales or boat brokerage activities, shall demonstrate to the complete satisfaction of the Director that the rental payment obligations of the sublessee to the Lessee reflect the financial benefits provided by the County to the Lessee as set forth in subsections (d) and/or (e)(i) of Section 13 of this Lease."

6. RETROACTIVE RENT AND INTEREST. In accordance with the provisions of Section 15 of the Lease, Lessee shall pay to County, within ten (10) days following the Effective Date, for the period between the 1999 Rental Adjustment Date and the actual date of payment, (the "Retroactive Period") the amounts owed by Lessee to County representing the difference between (i) the percentage rents payable by Lessee under the rental rates in effect prior to the effectiveness of this Lease Amendment from the 1999 Rental Adjustment Date and the 2009 Rental Adjustment Date, respectively, to the Effective Date and (ii) the sum which is calculated to be due for percentage rent from the 1999 Rental Adjustment Date and the 2009 Rental Adjustment Date, respectively, to the Effective Date based upon the rental rates as set forth in this Lease Amendment (the "Retroactive Rent").

7. INSURANCE. Commencing as of the Effective Date, Sections 25 through 28 of said Lease are deleted in their entirety and following substituted therefor:

"25. INDEMNITY CLAUSE.

Lessee shall indemnify, defend and hold the County and its Special Districts, elected and appointed officers, employees and agents harmless from and against all liability, including, but not limited to, demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with Lessee, its members, agents and invitees, operations and use of the Premises.

26. INSURANCE REQUIREMENTS.

Without limiting Lessee's indemnification of County and during the term of this Lease, Lessee shall provide and maintain the following insurance specified in this Lease. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by County, and such coverage shall be provided and maintained at Lessee's own expense.

A. General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) and endorsed to name County as an additional insured, with limits of not less than the following:

General Aggregate:	\$5 million
Products/Completed Operations Aggregate:	\$5 million
Personal and Advertising Injury:	\$5 million
Each Occurrence:	\$5 million

B. Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent), with a limit of liability of not less than \$1 million for each accident and providing coverage for all “owned”, “hired” and “non-owned” vehicles, or coverage for “any auto”. If and when valet parking services are provided at the Premises, Lessee shall provide Garagekeeper’s Legal Liability coverage (written on ISO form CA 99 37 or its equivalent), with limits of not less than \$3 million for this location.

C. Workers’ Compensation and Employers’ Liability insurance providing Workers’ Compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible. If Lessee’s employees will be engaged in maritime employment, coverage shall provide Workers’ Compensation benefits as required by the U.S. Longshore and Harbor Workers’ Compensation Act, Jones Act or any other federal law for which Lessee is responsible. In all cases, the above insurance shall also include Employers’ Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

D. If operating a marina, berthing, docking and/or launching of boats and/or pleasure crafts, and/or use of floating docks, piers and/or ramps, Lessee shall provide Marina Operator’s Liability insurance with a liability limit of not less than \$5 million per occurrence and an annual aggregate of \$10 million. If written on a “claims made” form, the coverage shall also provide an extended two-year reporting period commencing upon the expiration or earlier termination of this Agreement.

E. Commercial Property insurance, which:

(1) Shall cover damage to Premises, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30 or its equivalent), Ordinance or Law Coverage and Business Interruption equal to six-months’ rent;

(2) Shall be written for the full replacement value of the property, with a deductible no greater than \$250,000 or 5% of the property value, whichever is less; and

(3) Upon the occurrence of any loss, the proceeds of such insurance shall be held by County in trust for the named insureds as their interests appear. In the event of such loss, Lessee shall be obligated to rebuild or replace the destroyed or damaged

buildings, structures, equipment and improvements to the full satisfaction of the County. Said obligation to rebuild or replace is not dependent upon the existence of insurance. County shall reimburse Lessee for said rebuilding or replacement out of and to the full extent of the proceeds of said insurance as payments are required for said purposes. Any surplus proceeds after said rebuilding or replacement shall be distributed to the named insureds as their interests may appear.

F. Liquor Liability insurance: If and when the manufacture, distribution or service of alcoholic beverages occurs in the Premises, Lessee also shall provide Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with limits of not less than \$5 million per occurrence and \$10 million aggregate. If written on a "claims made" form, the coverage shall also provide an extended two-year reporting period commencing upon the expiration or earlier termination of this Agreement, or replacement coverage shall be maintained until such time.

27. MISCELLANEOUS INSURANCE PROVISIONS.

A. Waiver of Subrogation: Lessee shall obtain appropriate endorsements upon all insurance policies waiving subrogation by the insurer(s) against County.

B. Evidence of Insurance: Certificate(s) or other evidence of coverage satisfactory to County shall be delivered to County prior to the Commencement Date. Such certificates or other evidence shall:

- (1) Specifically identify this Lease.
- (2) Clearly evidence all coverages required in this Lease.
- (3) Contain the express condition that insurer will use its best efforts to give written notice by mail to County at least 30 days in advance of cancellation for all policies evidenced on the certificate of insurance.
- (4) Identify any deductibles or self-insured retentions exceeding \$25,000.

C. Review of Insurance Requirements: Insurance is to be provided by insurers acceptable to the County with an A.M. Best rating of not less than A:VII, unless otherwise approved by County.

D. Failure to Maintain Coverage: Failure by Lessee to maintain the required insurance, or to provide evidence of insurance coverage acceptable to County, shall constitute a material breach of this Lease.

E. Notification of Incidents, Claims, or Suits: Lessee shall report to County any accident or incident relating to services performed under this Lease that involves injury or property damage, which might reasonably be thought to result in the filing of a claim or lawsuit against Lessee and/or County. Such report shall be made in writing within 72 hours of Lessee's knowledge of such occurrence.

F. Compensation for County Costs: In the event that Lessee fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to County, Lessee shall pay full compensation for all

reasonable costs incurred by County.

28. [INTENTIONALLY OMITTED.]"

8. MISCELLANEOUS. Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and re-acknowledges its respective obligations under the Lease as amended hereby.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment No. 10 to Lease No. 7974 to be subscribed by the Chair of said Board and attested by the Executive Officer thereof, and the Lessee or its duly authorized representative, has executed the same.

COUNTY OF LOS ANGELES

By: Zev Yaroslavy
Zev Yaroslavy
Chairman, Board of Supervisors

ATTEST:

SACHI A. HAMAI
Executive Officer-Clerk of the
Board of Supervisors

By: Lachelle Smithman
Deputy

LESSEE:

WINDWARD YACHT AND REPAIR, INC.,
a California corporation

By: Adam K. Brown
Its: President

APPROVED AS TO FORM:

JOHN F. KRATTLI
Acting County Counsel

By: [Signature]
Senior Deputy



I hereby certify that pursuant to
Section 25103 of the Government Code,
delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By: Lachelle Smithman
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

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Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

7974 Supplement No. 10